

Chapter 52.1, Local Contract Clauses

[Reference: FAR 52, DEAR 952]

Overview

This section addresses the use of local clauses in DOE solicitations and contracts, and provides model local clauses that Contracting Officers may use when drafting their contracts.

Background

A local clause is a solicitation provision or contract clause that is not prescribed by either the FAR or the DEAR and is developed by a local DOE office for use in solicitations issued and contracts awarded by that office.

Local clauses can be used for the following kinds of subject matter:

- Administrative contract issues.

- Local DOE site practices and procedures that affect the contract.

- Local DOE office solicitation procedures.

- Practices and procedures that implement FAR and DEAR policies.

Model Clauses

One example of the type of subject matter that would be appropriate for addressing in a local clause would be contract language that provides for definitive identification of a contractor's systems of records subject to the Privacy Act (see the attached model clause - Privacy Act Records).

This would be appropriate for a local clause because it is administrative and does not deviate from either the FAR or the DEAR.

While the FAR, at clause 52.224-2, sets forth Privacy Act requirements for contractors who design, develop or operate a system of records on individuals, it does not identify those contractor record systems that are subject to the Privacy Act requirements. In this case, the local clause has a value added purpose - it tells both the government and the contractor how FAR requirements apply specifically to this individual contract.

Other material that may be appropriate for inclusion in local clauses includes:

- Specifying local site practices for the access of contractor employees.

- Identifying specific reports to be developed and submitted by the contractor.

- Identifying specific government property to be transferred to or from the contract.

- Defining local site policies and procedures for the release of contract-related information.

What material is not appropriate for a Local Clause?

Any policy, procedure, solicitation provision, or contract clause that deviates from the FAR or the DEAR. These would be treated as deviations from the FAR or the DEAR and would be subject to the Department's deviation procedures described in this AL.

Who approves Local Clauses?

The cognizant Contracting Officer is responsible for reviewing and approving the use of local clauses before issuing a solicitation or awarding a contract, consulting with his or her Procurement Counsel as appropriate.

What is the role of the Office of Management Systems?

Provides assistance to contracting activities in drafting their local clauses when requested.

Assesses the appropriateness of local clauses included in solicitations and contracts that are sent to Headquarters for review and approval.

Identifies proposed local clauses that may be inappropriate or more suitable for DOE-wide implementation and informs the Office of Procurement and Assistance Policy of their findings.

Provides to the Office of Procurement and Assistance Policy a copy of each local clause from reviewed contracts.

What is the role of the Office of Procurement and Assistance Policy?

Reviews local clauses to identify opportunities that may benefit other contracting offices and to develop standard clauses when the subject matter applies to procurement practices Department-wide.

Standardizes in the DEAR any policy, procedure, solicitation provision, or contract clause that has a significant effect beyond the operating procedures of the Department, or that has a significant cost or administrative impact on contractors or offerors. These kinds of policies or procedures go through the public rulemaking process in accordance with the Office of Federal Procurement

Policy Act (41 U.S.C. 418b), and would be coordinated with appropriate functional experts at both the field and Headquarters level, including the Office of General Counsel.

Publishes model local clauses in the DOE Acquisition Guide.

Point of Contact

The Headquarters point of contact for local clause questions is the Office of Procurement and Assistance Policy at telephone number 202-586-8182.

Privacy Act Records (Model Clause)

This Model Clause:

- May be used in contracts when the contractor will design, develop, or operate a system of records on individuals.
- Supplements FAR 52.224-2, which sets forth Privacy Act requirements applicable to contractors who design, develop or operate a system of records on individuals.
- Provides for definitive identification of the contractor's systems of records subject to the Privacy Act.

Privacy Act Records

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579) and implementing DOE Regulations (10 CFR 1008), the Contractor shall maintain the Systems of Records on individuals listed below in order to accomplish DOE functions. The parenthetical DOE number designations for each system of records refer to the official System of Record number published by the DOE in the Federal Register pursuant to the Privacy Act.

(Contracting Officer lists the Systems of Records here...)

Transition Activities (Model Clause)

This Model Clause:

- Provides guidelines for the transfer of the contractual effort from an incumbent contractor to a follow-on contractor when it is determined that performance of the work and services covered by the contract can not be interrupted during a contractor transition period.

Transition Activities

The Contractor recognizes that the work and services covered by this contract are vital to the DOE mission and must be maintained without interruption, both at the commencement and the expiration of this contract. It is therefore understood and further agreed in recognition of the above:

- (a) That at the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with a successor contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement Contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the replacement Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits.

(b) After selection by the Government of any successor Contractor, the Contractor and such successor Contractor shall jointly prepare mutual detailed plans for phase-out and phase-in operations. Such plans shall specify a training and orientation program for the successor Contractor to cover each phase of the scope of work covered by the contract. A proposed date by which the successor Contractor will assume responsibility for such work shall be established. The Contractor shall assume full responsibility for such work until assumption thereof by the successor Contractor. Execution of the proposed plan or any part thereof shall be accomplished in accordance with the Contracting Officer's direction and approval.

(c) This clause shall apply to subcontracts as approved by the Contracting Officer.

(d) The Contractor shall be reimbursed for all reasonable phase-in and phase-out costs, i.e., costs incurred within the agreed period after contract expiration that result from phase-in and phase-out operations.

Assignment of Existing Subcontracts (Model Clause)

This Model Clause:

- Provides guidelines for the transfer of existing subcontracts to a successor contractor when it is determined that existing subcontract contractual agreements are to be assigned to the successor contractor.

Assignment of Existing Subcontracts

(a) Existing subcontract contractual agreements entered into by the incumbent Contractor shall be assigned to the successor Contractor upon the effective date of assumption of full responsibility under this contract. The subcontract contractual agreements shall include all subcontracts and purchase orders; agreements with domestic and foreign research organizations; agreements with universities and colleges; and, other similar agreements.

(b) The terms and conditions of these subcontract contractual agreements, as they exist when assigned, shall remain in full force and effect unless modified by the Contractor and the subcontractor.

Transportation (Model Clause)

This Model Clause:

- Requires the contractor to utilize transportation carriers that are financially advantageous to the Government.

Transportation

The Contractor shall use carriers providing services commensurate with DOE program needs, taking full advantage of special reduced rates where available.

Small Business and Small Disadvantaged Business Subcontracting Plan (Model Clause)

This Model Clause:

- Supplements FAR 52.219-9, which requires the contractor to develop and submit a subcontracting plan.
- Provides for incorporation of the plan, as well as Contracting Officer approval of revisions.

Small Business and Small Disadvantaged Business Subcontracting Plan

The Small Business and Small Disadvantaged Business Subcontracting Plan submitted by the Contractor for this contract, and approved by the Contracting Officer on (insert date) is incorporated by reference in this contract. Any required revisions to the Plan shall be approved by the Contracting Officer.

Modification Authority (Model Clause)

This Model Clause:

- Identifies the Contracting Officer as the sole authority to perform certain actions under the contract.

Modification Authority

Notwithstanding any of the other clauses of this contract, the Contracting Officer shall be the only individual, on behalf of the Government, authorized to:

- (a) Accept nonconforming work,
- (b) Waive any requirement of this contract, or
- (c) Modify any term or condition of this contract.

Government Property (Model Clause)

This Model Clause:

- Supplements DEAR 970.5204-21, which provides guidelines for the furnishing of Government property to the contractor.
- Provides for the transfer of Government property from other specifically identified contracts.

Government Property

Upon the effective date of this contract, the Contractor shall accept transfer of and accountability for Government-owned property and equipment, including special nuclear material, from the following contracts:

Withdrawal of Work (Model Clause)

This Model Clause:

- Provides guidelines for the Government's withdrawal of work from the existing contract.

Withdrawal of Work

(a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another contractor or performed by Government employees.

(b) Work may be withdrawn: (1) in order for the Government to conduct pilot programs; (2) if the Contractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the contractor; or, (4) for any other reason deemed by the Contracting Officer to be in the best interests of the Government.

(c) If the withdrawn work has been authorized under an annual Work Authorization Directive, the work shall be terminated in accordance with the procedures in the Contract Clause titled "Termination".

(d) If any work is withdrawn by the Contracting Officer, the contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.